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ABSTRACT

This report addresses the denial of suffrage to mentally disabled persons institutionalized in Pennsylvania. The case study of Pennhurst Center patients who tried to vote in the 1976 election is described. Pertinent Pennsylvania statutes and current voting practices are analyzed. A national overview of the problem along with community and institutional attitudes toward voting by the mentally handicapped are discussed. State directives in support of voting rights of institutionalized Pennsylvanians and guidance to election officials and institutional administrators are outlined. Recommendations are made to institutions concerning how to assist in all aspects of the voting process, how to decrease community hostility toward mentally disabled voters, and how to help insure legal voting rights of institutionalized persons. (NI)

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The Last Suffrage Frontier: Enfranchising Mental Hospital Residents

—A report prepared by the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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LETTER OF TRANSMITTAL

PENNSYLVANIA ADVISORY COMMITTEE
TO THE U.S. COMMISSION ON CIVIL RIGHTS
June 1978

MEMBERS OF THE COMMISSION
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Sirs and Madam:

The Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights submits this report on the voting rights of persons institutionalized in Pennsylvania for reasons of mental disability as part of its responsibility to advise the Commission on civil rights problems within this State.

This report addresses the denial of suffrage to persons residing in institutions for the mentally disabled. When residents of Pennhurst Center, one such facility, exercised their right to vote in the November 1976 election, other voters and local officials questioned their right to do so. The Pennhurst patients became the focus of disturbance at the polls and of subsequent controversy.

Concerned community groups brought the situation to the attention of this State Advisory Committee. Initial review of facts suggested strongly that the rights of the mentally disabled here, and at other institutions, were probably being abridged. This Advisory Committee, therefore, undertook a study of practices and policies throughout the State with regard to the voting rights of the institutionalized.

This report is based on information acquired through mail and telephone interviews with staff members of the State's 29 institutions for the mentally disabled. The interviews revealed that confusion exists among most institutions in establishing policies to aid these citizens to vote. The Advisory Committee found that there is not enough direction on the part of State legal officials to ensure that the letter of the law is followed reasonably or equitably.

In addition to its findings, the Advisory Committee offers recommendations to appropriate local, State, and Federal officials in the hope that action will be taken to incorporate this voting group smoothly into the general electorate so that incidents similar to those in East Vincent Township will not occur again. It also is hoped that this study will provide some guidance for those States which have not yet begun to address the issue.

Respectfully,

Grace Alpern, Chairperson
Pennsylvania Advisory Committee

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Final production of the report was the responsibility of Vivian Hauser, Rita Higgins, Audree Holton, and Deborah Harrison, supervised by Bobby Wortman, in the Commission's Publications Support Center, Office of Management.

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Chapter 1

Introduction

Every extension of the voting franchise in American history has been met with resistance. Whether landless frontiersmen, freed slaves, women, or immigrants, those already enjoying the franchise have warned that the prospective voters lacked the competence and commitment to the community necessary for responsible electoral participation. Gradually, however, suffrage has broadened to the point where it is now a right inherent in citizenship, rather than a privilege based on wealth, race, or sex. For the Nation's citizens confined to mental institutions, however, that battle has yet to be won.

Until the 1970s, there was little concern about the voting rights of the institutionalized. To many, voting rights for the mentally handicapped was a ludicrous concept. Even advocates of patients' rights viewed voting as a low priority issue. The patients were forced to accept the fact that the community and the facility's administrators would not permit them to vote.

Attitudes began to change, however, as court-ordered confinement and voluntary residence at centers for the mentally ill underwent public scrutiny. No longer was it assumed by everyone that residence in a mental hospital proved a patient incapable of rational decisions. Investigations revealed that individuals were being institutionalized, not because they were unable to make rational decisions or because they needed to be separated from society, but because they were viewed as odd, burdensome to their families, or had nowhere else to go. At the same time, many began to question why the institutionalized had lost their rights upon entering the facility. These advocates contended that institutionalization did not justify denial of equal protection of the law.

Proponents of voting rights for the mentally disabled contend that voting is a therapeutic experience, providing patients an opportunity to exercise their judgment and reassuring them that they are still functioning citizens. Advocates also view voting as a step toward deinstitutionalization; it familiarizes patients with a normal activity in which they may engage upon returning to the community. Others have emphasized the symbolic value of the franchise which indicates that mental patients possess the same legal status as other citizens.[1]

The fundamental justification for granting mental patients the franchise, however, is that they have the same right to it as other citizens. The actions of elected officials affect a mentally disabled person as much as they affect any other citizen. Thus, residents of mental institutions need the ballot to protect their interests.

In the general community, many citizens who are eligible to vote do not. Many cast their vote thoughtlessly or irrationally. Yet all of these citizens—regardless of their competence, intelligence, or emotional stability—may vote.

In the last 5 years, residents of institutions for the mentally ill or retarded throughout the United States have begun to exercise their right to vote. Pennsylvania's provisions concerning the voting rights of the institutionalized are among the most advanced in the Nation.[2] Nevertheless, the institutionalized in Pennsylvania have had problems in registering, voting, and receiving assistance for both.

Since its creation in 1957, the U.S. Commission on Civil Rights has been charged with investigating allegations "that citizens of the United States are unlawfully being accorded or denied the right to vote."[3] The Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights undertook this study to determine whether voting rights are actually being accorded to institutionalized citizens. Advisory Committee members and staff of the Mid-Atlantic Regional Office (MARO) of the Commission interviewed and solicited information from State and local officials, institutional administrators, patients, and involved citizens. Although the report focuses on Pennsylvania, the Advisory Committee believes its findings and recommendations may prove relevant to other States. As more

institutionalized citizens seek to exercise their political rights in the coming years, the problems that have arisen in Pennsylvania will have to be confronted throughout the Nation.

Notes to Chapter 1

1. Barbara Armstrong, "The Mentally Disabled and the Right to Vote," *Hospital and Community Psychiatry*, vol. 27, no. 8 (August 1976), pp. 577–78.

2. 1973 Op. Atty. Gen., No. 48; and directives to election officers from Secretary of State C. Delores Tucker, July 1973, Feb. 4, 1976, and Oct. 4, 1976.

3. 42 U.S.C. §1975c (a)(5).

Chapter 2

Pennhurst Case Study

Problems relating to patients' exercise of the franchise first came to the attention of the Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights when residents of the Pennhurst Center voted in the November 1976 election.

Local citizens were stunned to see Pennhurst patients voting, and some expressed distress that severely handicapped individuals were voting as their equals. Many residents complained to the Pennhurst staff at the polls that the patients lacked the intelligence and awareness to vote properly.[1] Two local party officials were particularly incensed. A former party official accused a Pennhurst staff member of committing a misdemeanor by helping the patients vote and threatened prosecution.[2] An election official informed the complainant that he had no right to be in the polls and the complainant left.[3]

Despite the election judge's appraisal that accommodating the patients had been "a disaster" and that the election had been marked by "utter confusion the whole day," not a single patient had been prevented from voting. The last Pennhurst patient had voted by 4 p.m. and 89 of Pennhurst's 91 registered voters had cast ballots in a public election.[4] Because of illness, two patients did not vote.

After the November 1976 election, Advisory Committee members interviewed Pennhurst staff members, local election officials, community representatives, and patients in order to determine the real nature of the problems involved in this community's first experience with voting by the institutionalized.

Pennhurst is located in Spring City, Chester County, Pennsylvania, northwest of Philadelphia. Established in 1908, the center serves the five-county southeastern region of Pennsylvania. Pennhurst covers 600 acres and employs more than 1,500 persons.[5] Of the 1,200 mentally retarded patients, 80 percent are severely retarded and have multiple disabilities. About 100 patients are minors.

Chester County has a population of 325,000, of whom 130,000 are registered voters. Pennhurst patients are residents of the east precinct of East Vincent Township, known as East Vincent East. More than 850 voters, including about 90 Pennhurst residents, are registered in that precinct.[6]

The staff at Pennhurst, like those at most Pennsylvania institutions, became involved in patient voting as a result of legal rulings and State directives beginning in 1972.[7] While several other mental facilities in the State began voting programs as early as 1973, Pennhurst did not begin to develop electoral procedures until May 1975, when its staff directed specific questions to the State's attorney general.[8]

In the spring of 1976, five Pennhurst staff members formed the Voter Rights Committee, which sought to fulfill the center's responsibilities as established by directives from the Pennsylvania Department of Public Welfare. The committee adopted four guidelines:

1. Pennhurst is obligated to notify all patients of their right to vote through whatever means of communication necessary. (Ninety percent of the patients are illiterate; 35 percent rely on sign language.)
2. Staff should make no judgments about an individual patient's competence to vote.
3. Pennhurst has an obligation to see that patients receive political information that is objective and nonpartisan.
4. Staff must remain strictly neutral throughout the electoral process and should be as remote as possible from the actual voting.[9]

Beginning in May 1976, the committee met regularly to prepare for the fall election. The Pennsylvania law permitting registration by postcard became effective in August, thus facilitating patient registration. In September staff requested that the Chester County Board of Elections provide registration forms. Neil McClellan, chief registrar, brought the forms to Pennhurst.[10] Community volunteers, assisted by staff, conducted 2 days

of voter registration at the center in October. Local registrars employed "minimal screening." Patients were required to know their name and to indicate a desire to register. According to Catherine Clark, a Pennhurst administrator, the registrars used a "common sense approach" in declining to register a few patients who were "obviously incapable of voting."[11] Peter O'Meara, chair of the Voter Rights Committee, concedes that registrars initially may have "overcompensated" in permitting some patients to register.[12] In all, 91 patients registered.

The Pennhurst staff contacted a chapter of the League of Women Voters, which agreed to hold voter education classes on the grounds of the institution. The optional sessions were well attended. Although Pennhurst was open to visits by all candidates, only one party representative visited the voters.[13]

The Voter Rights Committee, under the mistaken belief that individuals who registered by mail must vote in person at the polls, made plans to transport Pennhurst residents to the East Vincent East precinct. Patients were responsible for indicating to staff their desire to go to the polls. To avoid long delays at the polls, the committee arranged to have four or five patients vote each hour.

The staff at Pennhurst knew that all the patients would require some assistance in voting; however, they were reluctant to become involved in the actual voting process. Because they were unable to obtain outside assistors, several staff members volunteered to assist the patients. Although election day is a holiday for State employees,[14] the Pennsylvania Departments of State and Public Welfare approved the arrangements.[15]

Communication among the various participants in the elections process proved to be less than adequate, and some confusion at the polls did occur on election day.

Members of the Pennhurst Voter Rights Committee had been in contact with Chester County officials and with Calvin Adams, borough secretary. Pennhurst staff also had consulted Neil McClellan, registration chief. The Voter Rights Committee assumed that Adams had authority in East Vincent's elections, but Adams did nothing to correct their mistaken impression. Neither McClellan, Adams, nor any other election officials suggested that the Voter Rights Committee contact the East Vincent East Board of Elections.

The Pennsylvania Department of State had notified William Wade, director of the Chester County Board of Elections, that several Pennhurst patients would be voting and needing assistance. The department requested that Wade work with the East Vincent board in providing assistance to the patients.[16] Wade contacted the East Vincent judge of elections,[17] but he failed to suggest that precinct officials meet with Pennhurst officials to facilitate voting at the polls by the patients.

In addition, a week before the election, the county board informed East Vincent Election Judge Marion Reitnour that several Pennhurst residents would be voting. During the week preceding the election, Reitnour had read in a local newspaper about the patients' plans to vote,[18] and she had obtained confirmation of the stories from the county board.[19] Calvin Adams similarly informed East Vincent board members that the Pennhurst residents would be voting. At no time did board members attempt to contact Pennhurst staff to work out some arrangements for the balloting.[20] Thus, while failure by the staff at Pennhurst to contact the precinct officials might be attributed to unfamiliarity with the election procedures, election officials could have eased the situation by communicating with the center.

On election day Pennhurst staff transported the patients to the polls as planned, on a staggered schedule. Each vehicle had a driver, an aide, and about three patients. The East Vincent board was surprised at the number of patients and the extent of their disabilities. The wheelchairs of many patients would not fit through the doorway of the former gas station used as the polling place, but officials raised the large overhead doors to admit the wheelchairs. High voter turnout in the 1976 election also resulted in a long wait at the polls for all voters.[21]

Despite the election board's initial surprise, the Pennhurst staff believed that the board did its best to accommodate the patients. The staff agreed to hold the patients back periodically to allow the long lines of voters to pass through.[22] Four staff members registered in East Vincent were present to assist the patients. Although the judge of elections asked patients to take the required oath, few were able to make an audible and distinct state-

ment and some could only nod their assent. All 77 patients who requested assistance received it.[23]

The voting assistance, which caused much of the subsequent controversy, appeared to work well. The assistors stood outside the polls behind a glass partition. Patients who needed help pointed to or named one of the assistors, who then escorted the voters into the booths. One of the assistors explained to the Advisory Committee the procedure followed inside the booth. The assistor would first read the paper ballot to the voter, then ask the voter to make his or her choices. If the voter was unable to mark the ballot, the assistor would mark it in accordance with the voter's instruction. Some patients chose to vote only for president, while others completed the entire ballot. No patients had difficulty voting, and in the opinion of Pennhurst's chief psychologist, Dr. James C. Hirst who served as an assistor, all exercised reasonable judgment in making their decisions.[24]

Aftermath of the 1976 Election

On the day after the election, a local newspaper reported that a local political leader in the east precinct of East Vincent Township, appeared before the East Vincent Board of Supervisors to question the patients' competence to vote. He claimed that permitting the patients to vote with assistance "amounted to giving the assistors another vote." He also warned that the precinct election board would resign "if this [voting by patients] happens again."[25]

Accusations continued to surface. One poll watcher, for example, claimed that the election officials "were angry and abrupt" and had questioned the patients' qualifications to vote, contrary to Pennhurst staff reports that officials were extremely accommodating.[26] Pennhurst officials residing in the Spring City area continued to hear grumbling that the patients were not intelligent enough to vote.[27] In March the East Vincent East Board of Elections resigned.

Preparation for May 1977 Primary

The staff at Pennhurst began preparing for the May primary election in March by reactivating the Voter Rights Committee. The task was complicated by the resignation of the East Vincent East Board of Elections, but preparations proceeded as before with only minor changes.[28] Five more Pennhurst residents registered in East Vincent.[29] The League of Women Voters was unable to assist, so the staff provided each voter with about 2 hours of training on the issues and offices involved in the upcoming primary.[30]

In addition, the Pennhurst staff sought to gain community acceptance of patient voting. A public meeting was held at the center to discuss the issue and local officials were invited. The local newspaper announced the meeting a week in advance.[31] A dozen East Vincent residents attended the May 3 meeting; Pennhurst staff members explained that legal rulings required the staff to help patients vote.

The county board of elections notified Pennhurst staff on May 5 that patients unable to state distinctly and audibly their need for assistance, as required by law, should probably vote by absentee ballot. The board promised to send representatives to assist in the absentee voting.[32]

Pennhurst staff held a meeting on May 10 with persons who expected to serve on the new East Vincent East Board of Elections. The prospective officials promised to interpret the assistance-request requirements liberally and assured the staff that all the Pennhurst voters would be given ballots even if they failed to qualify for assistance. The staff indicated that fewer patients would vote in the primary than had voted in the previous November election.[33]

The center's staff contacted all the patients registered to vote and notified them that they could use absentee ballots if they preferred, and suggested that patients unable to make distinct and audible statements vote by absentee ballot. On May 9 bipartisan representatives of the county board of elections visited Pennhurst and gave the 15 interested patients applications for absentee ballots.

The East Vincent East Board of Elections was formally appointed on May 12, five days before the primary election. Precinct officials felt that the county failed to provide them with adequate guidance, referring them only to the statutes contained in *The Election Officers' Manual*.[34]

May 1977 Primary

Absentee balloting took place at Pennhurst on May 13, the Friday before the primary. All pa-

tients who voted required voting assistance, which the staff provided. About a dozen residents voted.

Pennhurst staff were somewhat apprehensive on May 17, the day of the primary, because of rumors that some townspeople would be picketing outside the polls to protest voting by the patients. Staff arranged to transport about three patients per hour, during periods when polls would be least crowded. Local volunteers waited to meet the patients at the polls. Observers from the Community Relations Service of the U.S. Department of Justice and the State Advisory Committee of the U.S. Commission on Civil Rights were present throughout the morning.[35]

During the morning, the voting went smoothly. The major difficulty was in granting the patients assistance. Many of the patients did not make the distinct and audible request for assistance which the law required. Some had speech impediments. Others became unresponsive when faced with the row of officials. The assistors and the election officials often had to prompt patients into acknowledging that they wanted help. The officials were quite lenient in applying the assistance regulations.[36]

The voting process did encounter some different problems in the afternoon. A poll watcher present, objected to the assistance patients received, according to an election board member. He claimed that voters could only receive assistance in the voting booth, not while walking to the polls or signing in. The poll watcher also objected because some patients were prompted to request help. Despite his complaints, he did not file any challenges to the voting.[37]

By the end of the day, 41 Pennhurst residents had voted. All but one had been assisted. The board of elections was very accommodating in approving assistance requests. One official estimated that 20 percent of the requests could have been rejected as inadequate.[38]

Conclusions

In large part, the problems which arose in the initial voting by Pennhurst residents stemmed from inadequate communication. When the center's staff and East Vincent officials cooperated in planning the patients' voting procedures, most of the difficulties were resolved. The township was fortunate, moreover, in having an election judge, who, while in disagreement with patient voting, believed that as a public official, "You gotta throw out your personal opinion and just follow the law."[39]

In the future, patient voting should become less of an issue in East Vincent Township as residents become accustomed to seeing handicapped persons at the polls.

Notes to Chapter 2

1. Catherine E. Clark, Pennhurst's director of social services and member of the Voter Rights Committee, interview in Spring City, Pa., June 27, 1977 (hereafter cited as Clark interview); Peter H. O'Meara, chair, Pennhurst Voter Rights Committee, interview in Spring City, June 27, 1977 (hereafter cited as O'Meara interview). Interview reports are available in the Commission's Mid-Atlantic Regional Office (MARO) files.

2. James C. Hirst, Pennhurst's director of psychological services and member of the Voter Rights Committee, interview in Spring City, July 12, 1977 (hereafter cited as Hirst interview).

3. Robert E. Hipple, East Vincent East Democratic committeeman, interview in Spring City, July 12, 1977 (hereafter cited as Hipple interview).

4. Marion P. Reitnour, 1976 judge of elections, East Vincent Township, east precinct, telephone interview, Aug. 2, 1977 (hereafter cited as Reitnour interview); O'Meara interview; Clark interview; *Spring-Ford Reporter*, Nov. 4, 1976; and *Pottstown Mercury*, Nov. 4, 1976.

5. Pennsylvania, Department of Welfare, "Pennhurst State School"; O'Meara interview.

6. C. Neil McCellan, chief registrar, Chester County Voter Registration Committee, interview in West Chester, Pa., July 13, 1977 (hereafter cited as McCellan interview); O'Meara interview.

7. O'Meara interview; Clark interview.

8. Robert S. Smilovitz, assistant superintendent of Pennhurst, letter to Robert Kane, State's attorney general, May 1, 1976, in MARO files.

9. O'Meara interview.

10. McCellan interview.

11. Clark interview.

12. O'Meara interview; Peter H. O'Meara, interview in Spring City, July 12, 1977.

13. O'Meara interview.

14. O'Meara interview; Clark interview.

15. Robert N. Grant, Jr., administrative officer, Pennsylvania Department of State, letter to William Wade, chief clerk, Chester County Board of Elections, Oct. 29, 1976, in MARO files.

16. Grant letter to Wade.

17. Reitnour interview.

18. *Spring-Ford Reporter*, Oct. 7, 1976.

19. Reitnour interview.

20. Ibid.

21. O'Meara interview; Clark interview; Reitnour interview; and Hipple interview.

22. Ibid.

23. O'Meara interview; Clark interview; and Hirst interview.

24. Hirst interview; Hipple interview.

25. Reitnour interview; Hipple interview; O'Meara interview; and *Spring-Ford Reporter*, Nov. 4, 1976.

26. *Coatesville Record*, Nov. 12, 1976; Clark interview.

27. Hirst interview.

28. O'Meara interview.

29. Clark interview.

30. Susan L. O'Meara member, Pennhurst Voter Rights Committee, interview in Spring City, July 12, 1977 (hereafter cited as Susan O'Meara interview).

31. Linda P. Matthew, Pennhurst volunteer resources coordinator, letter to Everett Wilson, chairman, East Vincent Board of Supervisors, Apr. 25, 1977, in MARO files; *Pottstown Mercury*, Apr. 27, 1977.

32. William Wade, letter to Susan O'Meara, May 5, 1977, in MARO files; *Daily Local News* (West Chester), May 7, 1977.

33. O'Meara interview; S. Horace Mowrer, East Vincent East judge of elections, interview in Spring City, July 13, 1977 (hereafter cited as Mowrer interview).

34. Mowrer interview; John R. Potoski, minority inspector of elections, interview in Spring City, July 12, 1977 (hereafter cited as Potoski interview); Wright R. Miller, majority inspector of elections, interview in Spring City, July 13, 1977 (hereafter cited as Miller interview).

35. O'Meara interview.

36. Mowrer interview; Hipple interview; and O'Meara interview.

37. Potoski interview; Mowrer interview; Hipple interview; Miller interview; and *Daily Local News*, May 18, 1977.

38. Miller interview.

39. Mowrer interview.

Chapter 3

National Overview

Despite the fact that a significant number of Americans are confined to mental institutions, no national policy exists protecting those who may be barred from voting or establishing standards for disfranchisement. The Federal Government has in recent years looked upon any restrictions of the franchise as suspect and subject to strict judicial scrutiny.

The United States Supreme Court has stated that:

> ...no right is more precious in a free country than that of having a choice in the election of those who make the laws under which...we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.[1]

Although the Court has acknowledged that "administration of the electoral process is a matter that the Constitution largely entrusts to the State," it has warned that "in setting qualifications for voters, the States may not infringe upon basic constitutional protections."[2]

The Supreme Court has applied a "stringent test of justification" to voter qualifications, holding that:

> ...as long as the election in question is not one of special interest, any classification restricting the franchise on grounds other than residence, age, and citizenship cannot stand unless the district or State can demonstrate that the classification serves a *compelling state* interest.[3] [emphasis added]

The question of whether restrictions on the basis of mental ability serve such a compelling interest has not yet been determined by a Federal court.

Congress has expressed concern that tests of intellectual ability may unfairly prevent persons from voting. Since 1970, the Voting Rights Act has banned all tests that require a prospective voter to "demonstrate the ability to read, write, *understand*, or *interpret any matter* [or to] demonstrate any educational achievement or his knowledge of any particular subject."[4] [emphasis added]

These provisions have been interpreted as establishing "a heavy presumption against intelligence as a criterion upon which anyone's right to vote may be conditioned."[5] The Supreme Court has unanimously upheld the nationwide ban on literacy tests.[6]

The task of setting voter qualifications has remained largely in the hands of the States. Perhaps the single feature shared by all State statutes is ambiguity. Only 12 States expressly permit all citizens—regardless of mental ability—to vote. The other 39 jurisdictions, including the District of Columbia, utilize a variety of qualifications which tend to exclude mentally disabled citizens from electoral participation.

These provisions fall into three groups. Twenty-one States have adopted broad disqualification clauses proscribing voting by "idiots," "insane persons," "persons of unsound mind," "the feebleminded," or individuals who are "*non compos mentis*." In few instances, however, have the legislative bodies defined those quasimedical terms. Many experts contend that they, in fact, have no meaningful definitions. Lawmakers have left the application of those statutes to voting registrars, thus granting local officials practically limitless discretion in determining who is unfit to vote. These officials often presume that anyone residing in a mental facility is *prima facie* "insane."[7]

Eighteen States bar persons from voting who have been adjudicated incompetent or are under guardianship. In those States, registrars have no authority to inquire into an applicant's mental capacity; they need only determine whether a particular court order is in effect. This standard rests on two assumptions which mental patients' advocates challenge. The first is that judicial determination regarding competency and guardianship are accurate and equitable. Numerous critics contend that such proceedings are so often flawed that they should not form the basis for depriving persons of the franchise. The second assumption is

that persons incompetent to conduct their day-to-day affairs are unable to make rational voting decisions. Advocates reply that an individual may have difficulty managing personal matters but may still be able to determine which candidate he or she prefers.[8]

Three States prohibit all residents of mental institutions from registering to vote. Such statutes effectively equate being committed to an institution with a determination of incompetency, and often cite the added rationale that such patients are under the implicit guardianship of the State. Yet the commitment proceedings upon which these laws rely increasingly have been found to be inaccurate and unfair, casting doubt on the advisability of using them automatically to disenfranchise institutionalized patients. Even where commitment is appropriate, the fact that a person resides in an institution does not mean that he or she is incapable of voting.[9] Thirty-nine jurisdictions exclude some portion of their citizenry from the electorate because of mental deficiency. In the 12 States that do not have such disqualifying provisions, residence requirements often make it impossible for institutionalized citizens to vote. Many voting officials insist that the institutionalized are not local residents and, therefore, must register in their former communities. Obviously, few patients in mental institutions are able to travel to their old residences to register and to vote.

Barriers also impede absentee registration and voting by the institutionalized. Pennsylvania amended its election code in 1963 to deny absentee ballots to mental patients. As a result, patients still encounter serious obstacles in having their ballot accepted although they have the statutory right to vote.[10]

State courts recently began to reexamine their election laws in light of growing concern over mental patients' rights. The Belchertown (Massachusetts) Board of Registrars refused to register the residents of Belchertown State School, established for the mentally retarded. The registrars contended that by virtue of their residence at the school, the patients were under the guardianship of the State, and Massachusetts law bars persons under guardianship from voting. Two patients brought a class action suit on behalf of their fellow residents to force the registrars to accept their application.[11]

In its 1975 ruling in favor of the patients, the Suffolk County, Massachusetts, Supreme Judicial Court emphasized the:

> . . . long recognized distinction between placing a person under guardianship and placing him . . . in a mental health facility. . . . Incompetence to manage one's affairs or one's estate, which could lead to the appointment of a guardian, was never equated [by the legislature] with commitment or admission to a mental health facility.[12]

Moreover, the Massachusetts constitution and statutes "are conspicuously silent on the standard of mental competence demanded of a prospective voter other than to require that he complete a prepared affidavit and sign it or 'make his mark'." The court thus ruled that mental patients—unless formally adjudicated incompetent or placed under guardianship—were entitled to vote, and it ordered registrars to accept their applications.[13]

Five residents of the New Lisbon, New Jersey, State school for the mentally retarded attempted to register with the Woodland Township clerk. The clerk and the Burlington County Board of Elections refused to process the application on the grounds that the patients were not residents, and declared that they were disqualified by constitutional and statutory provisions denying the right of suffrage to idiots and insane persons.

The rejected applicants and 28 other residents of the school sought a court order directing the county board to permit them to register. A three-judge panel of the appellate division of the superior court issued an order holding that the school's residents could have "sufficient objective attachment" to the surrounding community to choose it as their voting residence.[14] The judges agreed with the deputy attorney general's statement that "the mere fact of residency in a State Institution does not entitle the Board of Elections to make a final presumption of idiocy."[15] The ruling was limited to the individual plaintiffs in the case.[16]

In most of the other States, courts have yet to rule on the validity of State laws which deny institutionalized citizens the ballot.

Notes to Chapter 3

1. Wesberry v. Sanders, 376 U.S. 1, 17 (1964).

2. Kusper v. Pontikes, 414 U.S. 51, 58 (1973).

3. Hill v. Stone, 421 U.S. 289, 297 (1975).

4. 42 U.S.C.A. §1973aa.

5. Robert Plotkin, "Too Crazy to Vote—Disenfranchisement of the Mentally Handicapped Citizen," *Mental Health Law Project Newsletter*, vol. II, no. 3 (Fall 1976), p. 11 (hereafter cited as Plotkin).

6. Oregon v. Mitchell, 400 U.S. 112 (1970), in which the U.S. Supreme Court upheld the constitutionality of the 1970 Voting Rights Act Amendments. In so doing it noted that "In enacting the literacy test ban...Congress had before it a long history of the discriminatory use of literacy tests to disenfranchise voters on account of their race." Although this case was decided in light of the tests' discriminatory racial effects, it has applicability to various classes disenfranchised because of prejudices. Such tests could work to exclude numerous institutionalized persons from the voting process.

7. Plotkin, pp. 1, 10;

8. Plotkin, pp. 10, 11.

9. Plotkin, pp. 10, 11. (Although the sum of State disqualification statutes is 42, only 39 States have such statutes, since 3 States utilize two types.)

10. Barbara Armstrong, "The Mentally Disabled and the Right to Vote," *Hospital and Community Psychiatry*, vol. 27, no. 8 (August 1976), pp. 579–80; Plotkin, pp. 10, 11; 25 Purdon's Pennsylvania Statutes §3146.1.

11. Boyd v. Bd. of Reg. Voters of Belchertown, 334 N.E. 2d 629 (1975).

12. *Id.* at 632.

13. *Id.* at 633.

14. Carroll v. Cobb, 354 A.2d 355, 363 (1976).

15. *Id.* at 359.

16. *Id.* at 363–364.

Chapter 4

Legal Background in Pennsylvania

Any individual who satisfies age and residency requirements in Pennsylvania has a constitutional right to vote.[1] Despite the fact that the Commonwealth's constitution does not restrict the franchise on the basis of mental disability, legal controversies over the right of institutionalized Pennsylvanians to vote have occurred during the last 5 years. Legal rulings have focused primarily on statutes or policies which contradicted the broad suffrage established in the State's constitution.

Statutes

The Pennsylvania State Election Code permits every citizen of the Commonwealth 18 years of age or older to vote, provided that prior to the election he or she has been a United States citizen for 1 month and a resident of the State and the election district for 30 days.[2] The same qualifications apply to voters in primary elections.[3]

The major rule for determining an individual's residence is: "That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning."[4] The State legislature has specified that "no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence...while kept in any poorhouse or other asylum at public expense...."[5] In recent years, this provision has led to litigation over whether patients of mental facilities could claim to be residents of the surrounding community.

Citizens must register in order to vote.[6] If an individual "is unable to appear in person to register because of illness or physical disability," he may submit a postcard-registration form. A registrant need not be present in the election district when submitting the card.[7] The registrant must indicate on the registration card:

> ...whether he has a physical disability which will render him unable to see or mark the ballot or operate the voting machine or to enter the voting compartment or voting machine booth without assistance and, if so, his declaration of that fact and his statement of the exact nature of such disability.[8]

Once registered, an individual may receive assistance in voting at the polls. The Pennsylvania Election Code requires that:

> ...before he shall be permitted to receive assistance, such voter shall *state distinctly and audibly* under oath or affirmation, which shall be administrated to him by the judge of election, the reason why he requires assistance.[9]

The voter may select any registered elector of the district to accompany him or her into the voting booth to assist in voting. The election judge must complete a "record of assisted voters," containing the names of the voters and their assistors and the reasons for assistance. This record is to be kept by the county board of elections and, with a few exceptions, may be examined only upon court order. "The penalties for improper assistance include fines, imprisonment and voiding of the ballot."[10]

The Pennsylvania constitution directs the legislature to establish procedures by which "qualified electors who...are unable to attend at their proper polling places because of illness or physical disability, may vote...."[11] Article XIII of the election code establishes such procedures.[12] Those who may vote by absentee ballot include:

> ...any qualified, registered, and enrolled elector who because of illness or physical disability is unable to attend his polling place or operate a voting machine and secure assistance by distinct and audible statement....[13]

In 1963, however, the legislature provided specifically that "the words 'qualified absentee elector' shall in nowise be construed to include persons confined in a penal institution or mental institution...."[14] This particular provision became the focus of Federal litigation which resulted in the provision being declared unconstitutional.[15]

Absentee voters unable to complete the ballot by themselves may receive assistance in voting. To obtain assistance, the voter must indicate, both on

the registration card and in a statement submitted with the application for an absentee ballot, the disability necessitating assistance. Any adult may provide assistance, but it must be rendered in secret. The assistor must complete a declaration that he or she has marked the ballot in accordance with the voter's instructions.[16]

Three recent legal rulings have clarified the Pennsylvania statutes which regulate voting by residents of mental institutions. In 1972, patients at Norristown State Hospital attempted to vote in Montgomery County. Several patients had voted in the spring primary election and by July, there were 31 registered to vote. In October, however, the solicitor of the county registration commission ruled that the patients were not residents of Montgomery County where the hospital is located, and he ordered their names stricken from the registration list. When seven additional Norristown patients attempted to register, the commission refused to process their applications.[17]

The Pennsylvania Department of Justice immediately filed suit againt the Montgomery County Board of Elections in Commonwealth court to restrain the board from closing the registration lists and refusing to register the Norristown patients. On October 6, Judge James S. Bowman temporarily enjoined closing of the lists; on October 11, he held a hearing on the refusal to register Norristown patients.[18]

The dispute centered on the election code provision that "no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence...while kept in any poorhouse or other asylum at public expense...."[19] The county board solicitor contended that the provision established the patients' homes prior to entering Norristown as their permanent residence. The plaintiffs contended that the patients could designate their chosen residence.[20]

Judge Bowman rejected the county board's interpretation of the residency provision. He declared:

> ...defendants should not refuse to open the door of the registration bureau to the seven named individuals simply because they are currently living in the Norristown State Hospital as patients....

The judge ordered the county board promptly to process the registration applications of the seven patients. The board subsequently complied, and Norristown patients were permitted to vote.[21]

Despite Judge Bowman's ruling, the extent of an institutionalized citizen's right to vote remained unclear. A 1967 decision by a three-judge court of common pleas in York County had disallowed an absentee ballot by a citizen suffering from "cerebral difficulty." The judges reasoned:

> ...because of cerebral difficulty this voter could not have understood for whom the votes were being cast and would not have been aware of the effect of the vote. This we think clearly shows incompetence on the part of the voter.[22]

The court concluded that the legislature had indicated "its intent that such persons should not be entitled to vote."[23]

Because of the conflicting precedents, Secretary of the Commonwealth C. Delores Tucker asked the State's attorney general whether patients of mental institutions could claim the facility as their residence and whether mentally ill or retarded persons or residents of mental institutions could be disenfranchised because of such disability or institutionalization.

Attorney General Israel Packel held first:

> [T]here is no legal basis in this Commonwealth upon which a retarded or mentally ill person can be disenfranchised solely because he or she is undergoing treatment for a mental disability or is known to reside in an institution for the treatment of the mentally disabled.[24]

Packel also advised:

> ...no person who resides at an institution for the mentally ill or mentally retarded in the Commonwealth who otherwise meets the residency requirements...of the Election Code...can lawfully be denied the right to register as a qualified elector in the voting district in which the institution is located.[25]

Finally, he explained that the denial of absentee ballots to citizens in mental institutions (as then mandated by State law) did not prohibit such persons from voting at their place of institutional residence. He reiterated that in Pennsylvania "mental health or competency is not a prerequisite to the right to vote." He urged that local election officials implement the opinion, so as "to insure that all qualified voters of Pennsylvania have an equal opportunity to cast their ballots."[26]

In another case, Clifford McGill, a patient at the Farview State Hospital in Wayne County, sought to vote by absentee ballot in Allegheny County, but was denied that right. County officials cited the election code provision that "the words 'qualified absentee elector' shall in nowise be construed to include persons confined in a mental institution." On December 6, 1974, McGill filed a civil action suit in U.S. district court for deprivation of rights (42 U.S.C. 1983)[27] against Will Alton, director of the Allegheny County Bureau of Elections, and other county officials.[28]

In the suit, McGill contended that the denial of absentee ballots to mental patients violated the Equal Protection Clause of the 14th Amendment and deprived them of their civil rights. The defendants entered a motion for summary judgment, arguing that since patients could vote in person at the polls near their institution, they were not deprived of any rights. Judge Wallace Gourley granted the defendants' motion and dismissed the case. He reasoned that:

> ...under the provisions of the Pennsylvania Election Code, the plaintiff has in no way been disenfranchised but has simply been denied an absentee ballot for voting in Allegheny County. This does not constitute a violation of his Constitutional Rights.[29]

McGill appealed the decision, to the U.S. Court of Appeals for the Third Circuit, insisting that the denial of an absentee ballot violated several of his constitutional rights. On October 6, 1975, the attorney general of Pennsylvania filed an *amicus curiae* brief[30] because of a "desire to insure free and equal access to the ballot for all qualified electors in the Commonwealth."[31] The attorney general contended that the provision denying absentee ballots to persons in mental institutions violated the Pennsylvania constitution, and that the provision "results in an arbitrary and invidious discrimination which violates the Equal Protection Clause of the Fourteenth Amendment" to the United States Constitution.[32] The Justice Department urged the court to reverse Judge Gourley's decision and remand the case to him "with instructions to declare the challenged statutory scheme unconstitutional."[33]

On October 21, 1975, a three-judge panel of the court of appeals vacated the district court's ruling because the Allegheny County officials had claimed to be following an earlier opinion of the State's attorney general. Now that the State's attorney general had concluded that the absentee-ballot provision was unconstitutional, the court wished to permit the county officials "to conform their actions to the Attorney General's expression."

When the case returned to Judge Gourley, the Commonwealth was made a party to the suit. In a consent decree, McGill, the Allegheny County officials, the secretary of state, and the State's attorney general agreed that the absentee ballot provision violated both the Pennsylvania and United States Constitutions.[34] Judge Gourley emphasized that "persons confined to mental institutions must be considered 'qualified absentee electors' entitled to absentee ballots." He directed the secretary of state to notify each county election bureau and State mental facility of the decision within 15 days.[35]

On February 5, 1976, the secretary of state sent to all county boards of elections a copy of the consent decree and directed election officials:

> ...to permit all such persons (confined to mental institutions) access to the absentee voting process in accordance with provisions relating to elections who are physically ill or disabled.[36]

The following day, the Pennsylvania Department of Justice similarly notified all superintendents of Pennsylvania's mental facilities.[37]

Notes to Chapter 4

1. Constitution of the Commonwealth of Pennsylvania, article VII, §1.

2. 25 P.S. §2811. In regard to this statute, the State's attorney general issued an opinion recognizing the voting rights of mentally disabled persons:

> A mentally retarded or mentally ill person cannot be disenfranchised solely because he or she is undergoing treatment for a mental disability or is known to reside in an institution for the treatment of the mentally disabled. 1973 Op. Atty. Gen. No. 48

3. 25 P.S. §2812.

4. 25 P.S. §2814 (a).

5. 25 P.S. §2813.

6. 25 P.S. §623-21.

7. 25 P.S. §623-20.3, 951-18.2.

8. 25 P.S. §623-20.3 (b) (14), 951-18.2.

9. 25 P.S. §3058 (a).

10. 25 P.S. §3530.

11. Constitution of the Commonwealth of Pennsylvania, article VII, §14.

12. 25 P.S. §3146.

13. Constitution of the Commonwealth of Pennsylvania, article VII, §14.

14. 25 P. S. §3146.1 (k); cf. 25 P.S. §2602 (w) (11).

15. Goosby v. Osser, 452 F.2d 39(1971), *rev'd* and *rem.* 409 U.S. 512 (1973).

16. 25 P.S. §3146.6a.

17. Commonwealth of Pennsylvania v. Parkhouse, No. 696 C.D. (1972).

18. Commonwealth of Pennsylvania v. Parkhouse, No. 696 C.D. (1972), Memorandum Opinion and Order, p. 1.

19. 25 P.S. §2813; Pa. Ele. Code §703.

20. Commonwealth v. Parkhouse, Memo. Op. p. 2, Statement of John Barbour, community services coordinator, Norristown State Hospital, "Voting Rights and the Politics of Residency" (unpublished), pp. 2–3.

21. Commonwealth v. Parkhouse, Memo. Op., p. 4,; Statement of John Barbour, p. 4.

22. In re 223 Absentee Ballot Appeals, 81 *York Legal Record* 137, 147 (1967).

23. *Id.*

24. *Id.*

25. *Id.*

26. 1973 Op. Atty. Gen. No. 48, pp. 128–31.

27. Section 1983 of the United States Code assures to every citizen the right to sue in Federal court for the deprivation of his or her civil rights by any person acting in behalf of the State. It reads in pertinent part:

> Every person who, under the color of any statute...of any State or Territory, subjects...any...person within the jurisdiction...[of the State or Territory]...to the deprivation of any rights...secured by the Constitution and laws, shall be liable to the party injured in an action at law...or other proper preceeding for redress.

28. McGill v. Alton, District Court of the United States for the Western District of Pennsylvania, Civ. No. 74–1164, Opinion (Jan. 10, 1975),

29. *Id.* at 2.

30. Attorney General *Amicus Curiae* Brief by the Commonwealth of Pennsylvania, U.S. Ct. of App., 3rd Cir., App. No. 75–1329 (hereafter cited as Atty. Gen's Brief.)

31. Atty. Gen's Brief, p. 1a.

32. *Id.* at 2 and 5.

33. *Id.* at 15.

34. The consent decree declared that portion of the election code, 25 P.S. §2606, which read, in pertinent part, "...the words 'qualified absentee elector' shall in nowise be construed to include persons confined in...a mental institution..." unconstitutional on its face.

35. McGill v. Alton, U.S. Ct. of App., 3rd Cir., No. 75–1329, Judgment Order (Oct. 21, 1975).

36. Secretary of State C. Delores Tucker transmitted to all county boards of election, Reference: Enclosed Consent Decree—Absentee Voting by Mental Patients.

37. McGill v. Alton, W.D. Pa., Cir. No. 74–1164, Notice of Compliance with Order (Mar. 3, 1976).

Chapter 5

Current Voting Practices

Pennsylvania maintains 19 mental hospitals and 10 centers for the mentally retarded. Advisory Committee inquiries drew responses from 26 facilities and provide the basis for a general description of their voting programs.

While institutional adminstrators share the common belief that their residents have the right to vote, their commitments to aid the institutionalized in exercising that right vary widely.

A few institutions have devoted extensive resources to ensuring that patients can vote. Pennhurst Center administrators believed that "we were to be totally involved" in patient voting,[1] and staff assisted patients at every step of the process. Mayview State Hospital staff felt obligated to inform patients of their right to vote prior to every election, to invite candidates to speak at the hospital, and to transport voters to the polls.[2] The coordinator of the Dixmount State Hospital program sought to make voting as accessible to patients as it was to the general public.[3] Staff at the three facilities emphasized that doubts about the competence of specific patients should not interfere with their right to vote.

Other Pennsylvania institutions did less. Employees of Warren State Hospital informed patients orally that they may vote, but assistance was provided only when requested. The facility's superintendent explained that "to become more active could be construed as applying undue pressure on the patients."[4] Administrators at Retreat State Hospital contended that "given the right to vote, patients should be capable of acting independently with respect to conducting their responsibilities as any other citizen."[5] Other officials felt that voting is a very personal process and that patients should not be helped to get to the polls and that only patients who are "competent" should have the right to vote.[6] In 1976, a presidential election year, nurses at one institution encouraged hospital residents to vote, and as many as 71 did so; in 1977, however, only 31 voted. The staff, said the superintendent, now "screens out" patients "better" and only informs "competent voters" about elections.[7]

Notification of Rights

The manner in which an institution's staff notifies its patients that they are entitled to vote directly affects the number who do so. Some facilities list the right to vote in the "Resident's Rights Notification" which patients receive upon admission and periodically thereafter.[8] Several institutions post notices prior to each election reminding patients of their right to vote and providing instructions for those who desire to vote.[9] A few State institutions supplement written notices with individual oral contacts to avoid disenfranchising illiterate patients.[10] Some staff members actively encourage patients to become interested in public affairs and register to vote.[11]

Some institutions are selective with regard to notification. At one center, direct-care staff "contact social services about residents who may wish to vote,"[12] while another center advises only "the residents who are able to understand all of their rights as citizens."[13] According to the superintendent of the Harrisburg State Hospital, "institutions are now encouraging *suitable* patients to register and vote, and at this hospital, *patients who inquire* about this process are assisted...."[14] (emphasis added)

Registration

Pennsylvania's adoption of postcard registration in 1976 has simplified patient voting. Patients who wish to vote request a registration card either by signing a list or by contacting a staff member. Most institutions seem willing to obtain the cards, assist patients in completing them, and return the cards to the local registrar. Staff members emphasize that they will help a patient register regardless of personal doubts about his or her competence.

The policy at Cresson Center is that "as new residents are admitted, *depending upon their physical conditions, IQ, etc.*, they are given an opportunity to register."[15] (emphasis added) The superintendent of Hamburg Center explained that "the

number of registered voters is an indication of those residents who responded and *exhibited not only interest but sufficient knowledge* to make this a meaningful experience."[16] (emphasis added.)

Voter Education

Nearly every institution in Pennsylvania has some program to familiarize patients with the voting procedure. Most institutions invite the League of Women Voters to visit registered patients and teach them how to operate voting machines or complete absentee ballots. Some election boards have cooperated by taking voting machines to the institutions so that patients may practice using them.[17]

One training program consists of a 10-week, 20-class course on election procedures and the political system.[18] Marcy State Hospital staff sponsored simulated elections, and the hospital permits patients to elect representatives to its residents rights committee.[19]

Political Information

A patient who is registered to vote may receive campaign literature in the mail. Nearly all patients have access to radio, television, and newspapers. Some facilities distribute candidate summaries or candidate biographies compiled by the League of Women Voters.[20]

A few institutions use staff to explain election issues to the patients. Several sessions at Marcy State Hospital were devoted to describing the 1976 presidential candidates and issues.[21] At Cresson Center the residents received instructions on "the platform standing and issues at hand."[22] Some concern has been expressed that staff instructors may shape the decisions of patients and that some politicians may accuse staff members of offering slanted evaluations.

Like all citizens, mental patients need political information in order to cast an informed ballot. Several institutions in Pennsylvania have invited candidates and party representatives to visit their patients. At Marcy State Hospital, local party officials held a "meet the candidates night" during which they discussed the candidates and answered patients' questions.[23] Some institutions, however, have declined to invite party representatives.[24]

Absentee Balloting

Absentee balloting has been generally free of difficulties. Since the 1976 ruling in *McGill v. Alton*,[25] patients have had the option of casting absentee ballots in either the township in which the institution is located or the township of their previous residence. Few patients have taken advantage of the latter option, primarily because they seem to consider the State facility to be their home.[26]

Absentee voting in the townships surrounding institutions has been a helpful option, particularly for nonambulatory patients or those who may feel uneasy at the polls.[27] Also, patients who might be disruptive can vote in the institution.[28] Moreover, patients in need of assistance, but unable to make a distinct and audible oath, can receive help in completing an absentee ballot without taking an oath.[29] Any adult, 18 years of age and up, whether or not registered in the precinct, may assist the absentee voter.[30]

Most of Pennsylvania's institutions seem to offer their patients a free choice between personal and absentee voting. At both Allentown State Hospital and Pennhurst Center, staff members confer individually with patients to determine their preference.[31] Understandably, absentee balloting is appealing to institutional staff because it eliminates the need for transportation and avoids problems at the polls for patients.

County boards of elections throughout the State appear to be cooperating fully in absentee balloting. County officials have supplied the ballots and provided bipartisan assistance in completing them.[32]

Voting at the Polls

The number of institutionalized Pennsylvanians who vote is not large. About 300 out of 1,450 patients at Mayview State Hospital have registered, but no more than 150 Mayview residents have ever voted in any one election.[33] As many as 120 patients have voted at Marcy State Hospital, while no more than 90 have voted at Pennhurst Center.[34] Most institutions, however, have far fewer voters; some, like Western Center, have none.[35] Institutionalized voters have encountered problems at the polls far out of proportion to their numbers. The major problems have been in escorting patients to the polls and in providing them with voting assistance.

Escort

Most Pennsylvania institutions provide their patients with transportation to the polls.[36] The mode of transportation depends on both the facility's resources and the number of patients needing transportation; some patients are transported in large buses, others in cars and wheelchair-vans.[37] Large buses bring many voters to the polls at the same time, often resulting in crowding, long lines of voters, and long delays. The sight of a busload of patients arriving at the polls and the resulting confusion appears to upset some townspeople more than the arrival of individual cars carrying patients.

To discourage patients from using the visit to the polls as a recreational outing, some institutions have placed the responsibility for obtaining transportation on the voters themselves. Nurses at Mayview State Hospital formerly escorted patients to the bus. In the future, patients will be notified where the bus will stop and the patients will be required to meet the bus, if they wish to vote, unless physically disabled.[38] Embreeville State Hospital has already implemented a similar policy with good results.[39] An activity program coordinator posted notices prior to election day, instructing registered voters who wished to vote to contact the office personally, indicating their need for transportation to the polls. He explained, "This method did seem to bring out just those who were aware of what was going on and had a realistic interest in voting."[40]

In the initial years of patient voting, beginning in 1974, Woodville staff, with help from the League of Women Voters, transported the voters to the polls. In 1976, when absentee ballots became available to patients, the hospital ceased to provide transportation. According to the superintendent, staff escort of patients to the polls "fuels community paranoia....The more you are involved, the more you have to explain."[41] Other Woodville administrators conceded that the decision to terminate voting transportation was an attempt to reduce community hostility. They claim that, while patients have a right to vote, they do not have a right to transportation to the polls.[42]

Woodville provides its patients with transportation to a wide variety of social events—picnics, ballgames, concerts. But if they wish to vote, they must find the right public bus to and from the polls. Staff confirmed that many patients suffering physical disabilities are unable to use public transportation. These patients, they said, "can vote by absentee ballot."[43]

To facilitate voting at the polls, some voting officials made preparation in advance of the patients' arrival. Marcy State Hospital notified polling officials that 120 patients would be coming to the polls and brought them in small groups throughout the day. Officials were prepared and even reserved parking spots and seats.[44] After long delays and confusion resulting from an unannounced trip to the polls, staff members at another center subsequently met with precinct officials before the next election to schedule and accommodate the patients.[45]

Assistance

For most institutionalized voters, the critical step in the election process is assistance in voting. Whether because of illiteracy, physical disability, unfamiliarity with voting, or simple nervousness, many patients would be unable to vote without assistance in the booth or machine. The assistance provisions of the election code as they relate to institutionalized voters are the least understood. Problems center on two questions: Who may receive assistance; and, who will provide it?

To obtain assistance, a voter must note on his registration card the disability which necessitates assistance and make a distinct and audible oath explaining the need for assistance before the election judge. Any election officials granting assistance to a voter who does not satisfy those requirements is guilty of a misdemeanor punishable by up to a $1,000 fine and 1 year in prison.[46] Pennsylvania courts have ruled that those provisions "are mandatory and no guilty intent is required, so that where such violations are established, the votes cast will be declared invalid and discarded."[47]

Enforcement of the provision that a request for assistance must be "distinct and audible" has been erratic. In the 1976 election, officials in one precinct, East Vincent East, accepted nods of the head.[48] In 1977 the new East Vincent East Board of Elections permitted Pennhurst's assistors to coax patients into signalling a need for assistance.[49] Similarly, another township board has disregarded the assistance-request requirements,

fearing that enforcement would cause chaos and long delays. The judge of elections stated that if she required patients to take the oath, elections would "last 4 days."[50] In still another township, election officials have enforced the requirements sporadically, other times neglecting them entirely, sometimes administering the oath to State hospital patients as a group.[51]

In some instances, it appears that officials have used the assistance-request requirements to prevent patients from voting. Several patients failed to repeat the assistance oath at the polls of one township in 1974. One patient was mute and another could not speak because of tremors caused by Parkinson's Disease. Election officials apparently not only denied those patients assistance but, also, refused to let them vote.[52]

Strict interpretation of the assistance-request requirements may prevent many disabled citizens from voting at the polls. Nearly every institutional staff member interviewed warned that many patients would be unable to make a "distinct and audible" oath, but could not possibly vote without assistance.[53] Although election officials might apply a lenient interpretation of "distinct," few will go so far as one official who ruled that a nod of the head by a mute voter was an audible request.[54] Assistance requirements, adopted in 1937, did not anticipate problems that might arise for handicapped voters. When Pennsylvania authorized assistance for absentee voters in 1963, it did not require an oath from the voter.[55]

The "distinct and audible" provision now appears to discriminate against citizens with speech impairment, forcing them either to vote without assistance or to cast an absentee ballot. The attorney for the Pennsylvania Bureau of Elections, Michael McCarthy, believes that the requirement violates the equal protection clause of the 14th amendment and would, if challenged in court, readily be voided. McCarthy has suggested that the provision be changed to require that a voter "communicate" his need for assistance, whether audible or not.[56]

Once the patient is granted approval to receive assistance, the problem than becomes who will provide the help? The election code states that the individual in need of assistance is to select "a registered elector of the election district" to help him or her. If an assistor is not registered in the district both that person and the election official commit a misdemeanor, punishable by up to a $1,000 fine and 1 year in prison, and the vote cast is invalid.[57]

Assistance generally comes from one of four possible sources. Some institutions arrange for community volunteers to meet the patients at the polls and provide assistance. Volunteer assistors have been conscientious and effective but pose two problems. First, institutions often have difficulty finding voters registered in the local district who are willing to help, especially in communities which are hostile toward patients' voting. Second, even when qualified volunteers are available, a handful usually assists the entire institutional contingent, meaning that one person may help up to a dozen patients vote. Such repetitive assistance can lead to suspicions, particularly in small precincts, that the assistor is trying to influence the election.

Another source of assistance is the staff of an institution. The Pennsylvania Department of Public Welfare's legal office has concluded that, if the employees are registered in the local district, they may assist patients in voting.[58]

Often, the task of assisting institutionalized voters has fallen to the election officials, imposing an additional responsibility on them and slowing down the voting process. The election code does not require officials to provide assistance, and some have declined to serve as assistors.

In cases where institutional staff have not previously arranged for assistance and officials decline to provide it, the patients must rely on other voters to help them. In one township, officials polled the voters' list to find assistors.[59] Spontaneous volunteers of this kind are sometimes difficult to obtain.

Notes to Chapter 5

1. Peter H. O'Meara, chair, Pennhurst Voter Rights Committee, interview in Spring City, Pa., July 12, 1977 (hereafter cited as O'Meara interview).

2. Willard E. Reitz, director, Mayview Social and Rehabilitative Services, interview in Bridgeville, July 19, 1977 (hereafter cited as Reitz interview).

3. Cathy A. Kotrick, chair, Dixmont Human Rights Committee, interview in Sewickley, July 20, 1977 (hereafter cited as Kotrick interview).

4. Harold J. Reinhard, superintendent, Warren State Hospital, letter to Grace Alpern, chair, Pennsylvania Advisory Committee, July 18, 1977.

5. George E. Gittens, superintendent, Retreat State Hospital, letter to Grace Alpern, June 16, 1977 (hereafter cited as Retreat State Hospital reply).

6. Staff interview, July 20, 1977; *Bridgeville Area News*, June 9, 1977.

7. Ibid.

8. Robert L. Mellott, chair, Western Center Resident's Rights Committee, letter to Grace Alpern, July 12, 1977 (hereafter cited as Western Center reply).

9. Willard E. Reitz, letter to Grace Alpern, June 23, 1977, in MARO files (hereafter cited as Mayview State Hospital reply); Genevieve Lieb, Woodville volunteer resources coordinator, interview in Carnegie, July 20, 1977 (hereafter cited as Leib interview); Cathy A. Kotrick, letter to Grace Alpern, June 23, 1977 (hereafter cited as Dixmont State Hospital reply); Retreat State Hospital reply.

10. Ray E. Bullard, Jr., superintendent, Torance State Hospital, letter to MARO, July 12, 1977; (hereafter cited as Torance State Hospital reply); O'Meara interview.

11. Daniel C. Gallagher, superintendent, Marcy State Hospital, letter to Grace Alpern, July 14, 1977 (hereafter cited as Marcy State Hospital reply); John W. Roop, superintendent, Allentown State Hospital, letter to Grace Alpern, July 6, 1977 (hereafter cited as Allentown State Hospital reply).

12. Nicholas J. D'Aluisio superintendent, Polk Center, letter to Grace Alpern, June 17, 1977 (hereafter cited as Polk Center reply).

13. Francis X. Bean, superintendent, White Haven Center, letter to Grace Alpern, July 12, 1977 (hereafter cited as White Haven Center reply).

14. John B. Logan, superintendent, Harrisburg State Hospital, letter to Grace Alpern, June ?2, 1977 (hereafter cited as Harrisburg State Hospital reply).

15. Philip I. Berdine, Cresson Center employee training specialist, letter to MARO, June 22, 1977 (hereafter cited as Cresson Center reply).

16. David S. Baumstein, superintendent, Hamburg Center, letter to Grace Alpern, June 16, 1977 (hereafter cited as Hamburg Center reply).

17. Hamburg Center reply; Reitz interview.

18. Donald L. Hartley, superintendent, Ebensburg Center, letter to Grace Alpern, July 22, 1977 (hereafter cited as Ebensburg Center reply).

19. Marcy State Hospital reply.

20. Norman B. Gaitens, letter to Julie Reitz, Laurelton Center, June 10, 1977; (hereafter cited as Embreeville State Hospital reply).

21. Marcy State Hospital reply.

22. Cresson Center reply.

23. Marcy State Hospital reply.

24. Leib interview.

25. U.S. Dist. Ct., W.Pa., Civ. No. 74–1164 (Jan. 8, 1976).

26. O'Meara interview; Kotrick interview.

27. Susan O'Meara, member, Pennhurst Voter Rights Committee, interview in Spring City, July 12, 1977 (hereafter cited as Susan O'Meara interview).

28. William S. Cummings, director of nursing, Mayview State Hospital, interview in Bridgeville, July 19, 1977.

29. Philip I. Faccenda, assistant attorney general, letter to C. Duane Youngberg, superintendent, Pennhurst Center, July 29, 1977, in MARO files.

30. Purdon's, 25 P.S. §31466a.

31. Susan O'Meara interview.

32. Leib interview; Susan O'Meara interview.

33. Reitz interview; Jean Romano, majority inspector of elections, South Fayette Township, District 1, interview in Bridgeville, July 19, 1977 (hereafter cited as Romano interview).

34. Marcy State Hospital reply; O'Meara interview.

35. Western Center reply.

36. Cresson Center reply, Harrisburg State Hospital reply, Polk Center reply, Retreat State Hospital reply, Werhersville State Hospital reply, Dixmont State Hospital reply.

37. Reitz interview; O'Meara inte view.

38. Reitz interview; Phyllis A. Cowden, chair, Mayview Patients' Rights Committee, interview in Bridgeville, July 19, 1977.

39. Embreeville State Hospital reply.

40. Ibid.

41. Staff interviews, July 20, 1977.

42. Leib interview.

43. Grayson interview; Leib interview.

44. Marcy State Hospital reply.

45. See Chapter 2.

46. Purdon's 25 P.S. §3531; *The Election Officers' Manual*, §782.

47. *The Election Officers' Manual*, §782.

48. Marion P. Reitnour, 1976 East Vincent East judge of elections, telephone interview, Aug. 2, 1977; O'Meara interview.

49. S. Horace Mowrer, 1977 East Vincent East judge of elections, interview in Spring City, July 13, 1977 (hereafter cited as Mowrer interview).

50. Marcenelle interview.

51. Kotrick interview; Mary Wilson, Dixmont director of nursing, interview in Sewickley, July 20, 1977 (hereafter cited as Wilson interview).

52. Wilson interview; Mary Wilson, memorandum to Dixmont administrators regarding patient voting on November 5, dated Nov. 7, 1974, in MARO files.

53. Cf., Reitz interview; Kotrick interview; O'Meara interview; Susan O'Meara interview.

54. Mowrer interview.

55. Purdon's, 25 P.S. §3146.6a.

56. Michael T. McCarthy, assistant attorney general, bureau of elections, telephone interview, July 28, 1977.

57. Purdon's, P. S. §§3058, 3530, 3531; *The Election Officers' Manual*, §781.

58. John A. Kane through James R. Adams, memorandum to Dr. Robert M. Daly et al., Apr. 20, 1977 (see appendix B).

59. Wilson interview.

Chapter 6

Community and Institutional Attitudes

The reactions of communities and officials to voting by institutionalized Pennsylvanians have been too varied to permit generalization. Some patterns of behavior and concern can be addressed, however.

Election Officials

Most institutions have found election officials, particularly county registration officials, to be cooperative. Many institutional staff members have noted that even poll workers, who object to voting by patients, have generally complied with the law. Some officials, like those in the voting districts in which Mayview State Hospital and Pennhurst Center are located, have gone out of their way to accommodate the patients.[1]

In other districts the experiences have been different. The encounters at the voting places by the Cresson Center staff brought the following reaction:

> In the beginning of our voting program, some local officials, representing both political parties, took a dim view of the fact that our mentally retarded personnel were voting. They claimed that "educationally speaking," they were not eligible voters by virtue of having no education, no knowledge of candidates, and were incapable of making sound voting decisions.[2]

Some election officials resigned in opposition to the patients' voting.[3] Some election boards fueled community suspicions through personal complaints or local news stories.[4] Patients at Norristown and Farview State Hospitals were denied registration in the surrounding communities on the grounds that they were not local residents.[5]

Local election officials complained that county election bureaus did not provide them with sufficient guidance. Election judges and inspectors experienced difficulty in applying the assistance request to meet State requirements. The main source of information for the poll officials has been the *Election Judges' Handbook*, which does not contain material relating specifically to the needs of institutionalized voters. The county boards' advice to local officials often has been to use common sense.[6]

Local Residents

The reactions of local citizens to voting by residents of nearby institutions have varied. Townspeople at one voting site "made special seating arrangements for residents [of Marcy State Hospital] and congratulated each as he or she left the voting booth," according to an official of that institution. Patients "were given the same respect as all citizens exercising their right to vote."[7]

In another community, according to a Woodville State Hospital official, voting by the mentally handicapped caused "considerable turmoil." Local residents and politicans were described by the official as "just frantic," and the hospital superintendent "was verbally attacked by the local populace" at several elections. Various candidates accused each other of manipulating the patients' votes. Largely as a result of the hostility, the Woodville State Hospital staff stopped transporting patients to the poll, and many began voting by absentee ballot.[8]

The Selingsgrove superintendent observed, "There has been no outward resistance to our residents registering or voting in this area. However, we have experienced subtle hostility on the part of citizens at the polls."[9] Staff at three institutions received complaints about voting by patients. Yet the personnel at those centers believe that the issue is important only to a fraction of the community—generally, those few who are directly involved in the election process. The East Vincent East judge of elections noted, as did various institutional administrators, that townspeople have reluctantly begun to accept patients' voting "because it's the law."[10]

Objections and Proposals

Even individuals opposed to full political participation by institutionalized citizens do not

recommend denying them the ballot outright. Rather, the critics favor restricting patients' suffrage rights in several particular ways.

Screening

A common contention is that, while some patients are capable of making a rational voting decision, others are not and should, therefore, be screened out. One State Hospital official has suggested that ward psychiatrists be given the power to decide which patients are "competent" to vote. Amending the Pennsylvania Election Code to require that a prospective voter "knows what he is doing" before he may vote has been urged by some election officials.

The trend of congressional and judicial decisions in recent decades has been to eliminate, not create, tests of voter "competence." Many authorities feel that screening would be discriminatory, unless applied to the entire voting community. Advocates of screening have been unsuccessful in suggesting specific and constitutional means of selecting those people intelligent enough to vote.

Qualified Franchise

A second major concern of townspeople and election officials has been that patients are not really residents of the area. Many critics claim that the patients have no stake in the community and are unfamiliar with local candidates and issues. They also fear that the patients may vote as a bloc and therefore could determine the outcome of an election in small districts. As the administrator of one hospital stated:

> To permit patients to register within this county, which is rural, and to vote within the confines of the locality, gives the patients here the potential for voting as a block and exercising a wholly undue influence on the course of local politics...in which most patients have no permanent interest.[11]

Individuals concerned with the residency issue have advocated several solutions. Some recommend that the patients be permitted to vote by absentee ballot only in their area of residence prior to institutionalization. Others have advocated a "limited franchise," permitting institutionalized citizens to vote in State and national, but not local or county elections. They reason that the patients seemingly have "no knowledge" of local affairs.[12]

Such concerns have been voiced primarily in small rural districts, where election contests are close and where institutionalized voters comprise, potentially, a significant portion of a small electorate. Pennsylvania law requires that anyone who lives in an area for 30 days must be considered a resident. Many patients have resided in institutions for decades and consider the institution their home.

Mandatory Absentee Balloting

Still another solution which critics of patient voting advocate is mandatory absentee balloting. Some critics, utilizing the residency argument, contend that the patients should vote in their prior home districts. Other critics suggest that even if the patients vote in the institution's district, they should still use absentee ballots. By their rationale, the patients would no longer cause chaos at the polls or antagonize local residents.[13]

Opposition is almost unanimous by institutional staff to mandatory absentee voting. Several staff members interviewed agreed that the real motivation for that proposal is the discomfort which many local residents feel at seeing deformed individuals or being near mental patients.[14] The administrators fear, as do some election officials, that absentee voting would encourage vote fraud and manipulation, because the balloting would occur inside the institution, instead of in public.

In essence, the three proposals tend to neutralize and restrict the suffrage rights which patients have won. Opponents of voting by the institutionalized have sought to whittle away the right of this group to vote, ostensibly to ensure an informed electorate and smooth elections.

Notes to Chapter 6

1. Willard E. Reitz, director, Mayview Social and Rehabilitative Services, interview in Bridgeville, July 19, 1977 (hereafter cited as Reitz interview); Peter H. O'Meara, chair, Pennhurst Voter Rights Committee, interview in Spring City, June 27, 1977 (hereafter cited as O'Meara interview).

2. Philiph I. Berdine, Cresson Center employee training specialist, letter to MARO, June 22, 1977, in MARO files (hereafter cited as Cresson Center reply).

3. Lois Depp, former Dixmont voting coordinator, interview in Sewickley, July 20, 1977.

4. David Grayson, director, Woodville Social and Rehabilitative Services, interview in Carnegie, July 20, 1977 (hereafter cited as Grayson interview); *Bridgeville Area News*, June 9, 1977.

5. Section III (B), Unpublished Statement of John C. Barbour, coordinator, Norristown Community Services, "Voting Rights and the Politics of Residency" (no date), in MARO files; Robert J. Hammel, acting administrator, Farview State Hospital, letter to Grace Alpern, June 21, 1977, in MARO files (hereafter cited as Farview State Hospital reply).

6. S. Horace Mowrer, East Vincent East judge of elections, interview in Spring City, July 13, 1977 (hereafter cited as Mowrer interview); John R. Potoski, East Vincent East minority inspector of elections, interview in Spring City, July 12, 1977; Marge Marcenelle, judge of elections, South Fayette Township District One, interview in Bridgeville, July 19, 1977 (hereafter cited as Marcenelle interview).

7. Daniel C. Gallagher, superintendent, Marcy State Hospital, letter to Grace Alpern, July 14, 1977, in MARO files.

8. Grayson interview; Suzanne B. Kreinbrook, superintendent, Woodville State Hospital, interview in Carnegie, July 20, 1977.

9. Joseph J. Scartelli, superintendent, Selinsgrove Center, letter to MARO, June 20, 1977, in MARO files.

10. Mowrer interview; Cathy A. Kotrick, chair, Dixmont Human Rights Committee, interview in Sewickley, July 20, 1977 (hereafter cited as Kotrick interview); Reitz interview; Peter H. O'Meara, interview in Spring City, July 12, 1977 (hereafter cited as O'Meara interview II).

11. Farview State Hospital reply.

12. Marge Marcenelle, Jean Romano, Shirley Cheesebrough, and Marion Grafe, officers, South Fayette Township District One board of elections, interviews in Bridgeville, July 19, 1977.

13. Marcenelle interview; *Bridgeville Area News*, June 9, 1977.

14. Kotrick interview; O'Meara interview II.

Chapter 7

State Directives and Guidance

Judge James S. Bowman's October 1972 decision clearly affirmed that institutionalized Pennsylvanians have voting rights. Those rights were more precisely defined in the ensuing 3 years, but the various legal rulings were to remain meaningless until State agencies explained them to election officials and institutional administrators.

Available State guidance was seldom adequate, often consisting of cursory notifications of a particular ruling, with little or no elucidation. The recurrent complaint of local officials and institutional staff was that State agencies left the problem of patient voting in their laps, urging them to rely on "common sense."

Guidance to Election Officials

The cooperation of county election bureaus and township boards of election was essential in implementing the legal rulings because of the logistical problems involved for institutionalized citizens. Yet successful cooperation could only occur if these officials were informed of election code provisions and how the officials relate to voters with mental disabilities. Although the Pennsylvania Department of State, which oversees the bureaus of elections, notified voting officials of legal developments, it neglected to suggest ways of adapting to the new provisions.

Secretary of the Commonwealth C. Delores Tucker sent three memoranda to county boards of elections.[1] The first, dated July 19, 1973, included the 1973 Attorney General Israel Packel opinion (mailed at his suggestion). Secretary Tucker's communication was brief:

> In accordance with the enclosed Opinion you are hereby advised to immediately implement the same to insure that all qualified voters of Pennsylvania have an equal opportunity to cast their ballots in subsequent elections.

Also enclosed with the communication was Judge Bowman's 1972 decision in *Commonwealth v. Parkhouse*,[2] "which," she noted, "is self-explanatory." Difficulties which might arise from those two rulings were not discussed.[3]

A second memorandum to county boards of elections followed after the decision in *McGill v. Alton*.[4] In the February 4, 1976, directive was a copy of the consent decree, "which is self-explanatory." Secretary Tucker concluded:

> As the State's Chief Election Officer, I authorize and direct you to permit all such persons [confined to mental institutions] access to the absentee voting process in accordance with provisions relating to electors who are physically ill or disabled.[5]

There was no indication whether absentee voting by mental patients would pose any unique problems.

On October 4, 1976, Secretary Tucker noted in a memo:

> Under the Pennsylvania Constitution all inmates of prisons and mental institutions have the right to register. Therefore, you are directed to accept application made by individuals who fall within this class. Inmates of mental institutions are eligible to vote under a consent decree issued by the Federal court.[6]

The memorandum provided no help to boards which might have found the previous directives inadequate.

The department of state's failure to issue detailed guidelines on procedures for voting by mental patients was somewhat understandable, because voting by the institutionalized was as new to the State officials as it was to county officials. Moreover, several sections of the Pennsylvania Election Code were antiquated and inapplicable to the special circumstances involved in voting by those residing in institutions. The department of state officials offered to confer with local officials regarding particular problems. County boards of election had practically no guidance from the State. Local election boards, which actually conducted the voting process, did not receive the memoranda. Their guide was *The Election Officers Manual*, which also lacked instructions on the particular needs of institutionalized voters.[7]

Guidance to Institutional Administrators

While staff of State mental facilities received more detailed and frequent information from the department of public welfare,[8] the directives, like those from the department of state, were primarily notifications of rulings and statutory provisions.

In September 1973 the Pennsylvania Department of Public Welfare issued a bulletin to various administrators, including institutional superintendents, reporting on the attorney general's opinion issued 2 months earlier. It included a reprint of the election code, *Rules for Determining Residence*.[9]

Two years later in August 1975, the department of public welfare issued a bulletin to institutional superintendents explaining the election code provisions relating to voting assistance. The memorandum discussed assistance, eligibility, and the procedure to be followed in obtaining it. The bulletin made clear that voters must make a distinct and audible oath to receive help, and only voters registered in the particular district could provide assistance. Unlawful assistance could result in penalties of up to $1,000 and 1 year in prison for the voter and election officials.[10]

After the decision in *McGill v. Alton*,[11] the State's department of justice notified institutional superintendents of the consent decree.[12] The following month, the department of public welfare's deputy secretary for mental retardation clarified the decree for administrators of retardation centers. He noted that permitting patients to cast absentee ballots "does not mean that a resident doesn't also have the right to vote in the county where the residential facility is located." The deputy secretary explained that the required 30 days of residence "may be established while in an institution." The instructions concluded by pointing out that while county election boards were responsible for validating registration, "any situations of suspected discrimination should be referred to the appropriate county legal services association."[13] The secretary of public welfare also issued a bulletin to all institutional superintendents directing them to grant patients access to the absentee-voting process "in accordance with the provision relating to electors who are physically ill or disabled."[14] Copies of the provisions were included.

Questions about patient-voting procedures continued to arise. On October 13, 1976, the deputy secretary for mental health sent mental hospital administrators an opinion from the Pennsylvania Department of Public Welfare's office of legal counsel. The opinion was prepared in response to inquiries from Allentown State Hospital and indicated that "a patient has the option of choosing where to register or vote; he may choose either the institution or the place which he regards as his residence." The Allentown staff had also asked:

> Whether you may invite the League of Women Voters to assist your patients in registering and voting and educating patients about candidates and issues, and whether you may ask such an organization to assist in arranging transportation for patients to and from the place of registration and the place of voting? Also, whether your staff may have reality oriented current event discussions with patients about the political issues in therapy setting?

According to the attorney general's office, "The answer to all of these questions, as a legal matter, is 'yes'."[15]

The most thorough explanation of patient voting procedures came in an April 1977 memorandum from the office of legal counsel to the deputy secretaries for mental health and mental retardation and the regional commissioners. (See appendix B.) The memorandum discussed the right of mental patients to vote as well as the manner and location in which they might register. It explained voting-assistance procedures and noted that "patients and residents may nominate as their assistants staff members of the hospital or center who are registered, qualified electors," although "it is desirable that in such instances the nominee be specifically selected as an assistant by the patient [or] resident." The memorandum placed the responsibility on superintendents and staff to help patients unable to vote in person to apply for absentee ballots. The State's attorney explained that institutional staff must "bear responsibility for adequate care, supervision and security of patients and residents during all phases of registration, transportation and voting."[16] The office of mental retardation and the regional commissioner for mental health subsequently distributed the memorandum to superintendents of retardation centers and mental hospitals.[17]

Some of the directives from the department of public welfare, however, went to mental health officials while others were sent to mental retardation officials. Each institutional superintendent should have received a copy of these memoranda. The memoranda explained what the institutions *could* do to facilitate patient voting without instructing staff as to what they *should* do (emphasis added). The September 1976 letter from the welfare department's attorney to Allentown State Hospital, for example, answered the hospital's questions on voter education and transportation "as a legal matter." But the attorney cautioned that "each question also involves policy consideration for determination of the office of mental health and I have not attempted to deal with the policy aspects of your questions." Thus, while hospital staff knew that they could sponsor "reality oriented current events discussions with patients about the political issues," they had no guidance as to whether they should hold them.[18]

Notes to Chapter 7

1. These three memoranda are the only ones which the Advisory Committee obtained through its investigation. The Advisory Committee formally requested that the secretary of the Commonwealth record copies of all "information which you have issued regarding voting by the mentally or physically handicapped." Letter to C. Delores Tucker, June 14, 1977.

In her reply, July 13, 1977, Ms. Tucker indicated the existence of no directives other than the three discussed in this section. In a telephone conversation on July 28, 1977, Michael T. McCarthy, attorney for the bureau of elections, confirmed that these were the only three directives issued.

2. No. 696 C.D. (1972).

3. C. Delores Tucker, memorandum to all county boards of elections, Feb. 4, 1976.

4. U.S. Dist. Ct., W. Dist. Pa., Civ. No. 74–1164 (Jan. 10, 1975).

5. C. Delores Tucker, memorandum to all county boards of elections, Feb. 19, 1973.

6. C. Delores Tucker, directive to all county boards of elections, Oct. 4, 1976.

7. *The Election Officers' Manual*, ed. George E. Fowkes (Pittsburgh: W. G. Johnston Co., 1977).

8. The directives discussed in this section were obtained from institutional administrators and from Frank S. Beal, secretary, Pennsylvania Department of Public Welfare. Additional memoranda may have been issued, particularly by regional deputy secretaries and commissioners, but served primarily to relay information from the department to institutional superintendents.

9. Helene Wohlgemuth, secretary, Pennsylvania Department of Public Welfare, Bulletin No. 1164 to regional deputy secretaries, institutional superintendents, county MH and MR administrators, office, bureau and division heads, and county commissioners, Sept. 17, 1973.

10. Frank S. Beal, Bulletin No. 1331 to institutional superintendents, Aug. 15, 1975.

11. No. 696 C.D. (1972).

12. Jeffrey Cooper, deputy attorney general, memorandum to all superintendents of state mental facilities, Feb. 4, 1976.

13. Stanley Meyers, deputy secretary for mental retardation, memorandum to regional MR commissioners, State school and hospital superintendents, and MR unit directors, Mar. 30, 1976.

14. Frank S. Beal, Bulletin No. 1164, supplement no. 1, to office, bureau and division heads, regional deputies, and institutional superintendents, Apr. 15, 1976.

15. David N. Fields, State's assistant attorney general, memorandum through James R. Adams, to David H. Orr, Allentown State Hospital, Sept. 10, 1976; Robert M. Daly, deputy secretary for mental health, memorandum to regional deputy secretaries, superintendents of State mental hospitals, and administrators of restoration centers, Oct. 13, 1976.

16. John A. Kane, assistant attorney general, memorandum through James R. Adams, general counsel, to Robert M. Daly, Peter Polloni, and regional commissioners, Apr. 20, 1977.

17. Carl B. Elser, office of mental retardation, memorandum to regional deputy secretaries, regional MR commissioners, superintendents of State centers, and MR unit directors, May 13, 1977; Harriet L. McMasters, western regional office, memorandum to superintendents of State mental hospitals in western region, May 3, 1977.

18. Fields, memorandum through Adams to Orr, Sept. 10, 1976.

Chapter 8

Conclusions and Recommendations

The Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights has drawn three principal conclusions from its investigation. First, institutionalized mentally disabled citizens must receive assistance at all stages of the voting process. It is not enough to tell the patients that they may vote. It is essential that staff play an active role in helping patients exercise their franchise.

Secondly, the patients themselves must retain free choice at all stages of the electoral process. They should decide whether to register, whether to attend classes or information sessions, and whether to vote by absentee ballot or in person.

Thirdly, staff discretion over the voting process must be minimized. Institutional administrators currently have a free hand in shaping voting programs. Yet, some staff are hostile to patients voting, and many are unwilling to expend sufficient resources to aid them. Continued monitoring and new safeguards will be required to ensure that the spirit of the provisions for pr ient suffrage is being fulfilled.

Notification of Rights

Conclusions

Many patients are still unaware of their right to vote. Inadequate notification may occur when institutions perfunctorily include voting in a routine list of rights handed to the patient upon admission. Some staff notify only select patients thought to be "competent"; blind or illiterate patients are ignored by written notifications, as deaf patients are by oral ones.

Recommendation 1

Staff should explain to individual patients, through whatever mode of communication is necessary, their right to vote and related procedures. Such notification should be made to all patients irrespective of their conditions. Each patient should be reassured that assistance will be provided.

Recommendation 2

Staff should repeat the notification process for all patients prior to every election.

Registration

Conclusions

Registration by postcard and the cooperation of most county election boards has made registration by patients relatively trouble free. A few institutions, however, screen out "unsuitable" patients from registering.

Recommendation 1

Staff should obtain the registration cards and, if necessary, assist patients in completing and returning them.

Recommendation 2

Any patient who satisfies the legal requirements and indicates a desire to vote must be permitted to register, with whatever assistance is necessary to ensure the free exercise of the franchise.

Voter Education

Conclusions

Political information available to institutionalized voters is inadequate. Many patients lack knowledge of candidates and issues, and few candidates or party representatives campaign at institutions. Staff cannot be expected to provide neutral political information.

Recommendation 1

Institutions should include instruction in civics and government in their basic education courses. The Pennsylvania Department of Public Welfare should fund the development of a civics education program for the mentally handicapped.

Recommendation 2

Staff should make accessible to voters all available election information and provide access to the news media.

Recommendation 3

Institutional staff should teach patient voters to operate voting machines or to complefe ballots prior to each election.

Recommendation 4

Staff members should invite candidates and party representatives to meet with patients at institutions before each election.

Absentee Balloting

Conclusion

Voters who need assistance but cannot make a distinct and audible oath may vote absentee. There is some danger that institutions which face severe community hostility because of patient voting may capitulate by encouraging patients to vote absentee. Other administrators may shift to absentee ballots because they are more convenient than voting at the polls. But institutionalized patients do have the right to vote in person. Some observers fear that mandatory absentee balloting might increase the possibility of voting improprieties.

Recommendation 1

Any patient who so desires should be permitted to vote absentee. Staff should encourage absentee voting only when personal voting is impractical for a patient because of severe disability or inability to request needed assistance.

Recommendation 2

When absentee balloting does occur at an institution, election officials should supervise the process to minimize the risk of irregularities or manipulation.

Transportation to the Polls

Conclusion

Most institutions already provide their patients with transportation to the polls. Some make all the arrangements for the patients, while others place some responsibility on the voters themselves. Utilization of large buses may cause community resentment and delay at the polls.

Recommendation 1

All institutions should provide transportation for patients who desire it. But the voters should be required to take the initiative, either by indicating that they need transportation or by going, when physically able, to a central area to meet the vehicle.

Recommendation 2

Transportation should be handled in such a manner that patients do not attract undue attention and do not create a backup of voters at the polls.

Voting at the Polls

Conclusions

The major problem at the polls has been confusion stemming from inadequate preparation. Polling officials and institutional staffs have not always been in contact before an election. Polling places and voting booths are often unsuitable for handicapped or wheelchair-bound voters.

Recommendation 1

Election officials and institutional staff should meet before each election to work out staggered schedules for patient voting and to make necessary logistical arrangements.

Recommendation 2

Staff should escort patients into the polls and supervise them, if necessary, during all processes except for the actual voting.

Recommendation 3

The Pennsylvania Department of State should require the physical improvement of polling places to accommodate handicapped voters.

Assistance

Conclusions

The "distinct and audible" oath requirement of the Pennsylvania Election Code discriminates against voters with speech disabilities. The requirement that assistors must reside in the election district increases the difficulty of obtaining assistors. Election officials remain confused as to what assistance is permissible and who may provide it. Any individual, whether staff or a community volunteer, who assists patients is open to accusations of manipulation. Election board members are often too busy to provide assistance and may lack

training in working with mental patients. Yet without adequate assistance, the right to vote is meaningless for many institutionalized citizens.

Recommendation 1

Whether by legislative or judicial action, the "distinct and audible" oath requirement should be eliminated. Instead, officials should permit assistance to voters who, having indicated the need for assistance on their registration card, affirm it in a recognizable manner before the election judge by whatever means of expression the voter is most capable.

Recommendation 2

The general assembly should eliminate the requirement that an assistor be a voter registered in the particular election district, but require instead that assistors be registered Pennsylvania voters.

Recommendation 3

Where possible voters [illegible] assistance from *two* assistors, [illegible] the two major political [illegible]

Recommendation 4

Local board[illegible] the assistors before [illegible] tation with party offi[illegible]

Recommendation 5

The Commonwealth should compensate assistors as it does other election officials.

Recommendation 6

Election officials should be eligible to serve as assistors, but not anyone on the ballot.

Recommendation 7

Staff should be used to assist patients from their institutions only as a last resort.

Recommendation 8

Prior to each election, assistors should receive instruction from county election officials in relevant election code provisions and training from institutional staff in working with the patients.

Recommendation 9

Election officials should publicize the penalties for manipulation or fraud to individuals involved with the patients' voting. Law enforcement agencies should investigate formal accusations of improprieties in voting assistance or interference with patients' right to vote.

Recommendation 10

The Pennsylvania Department of State should provide county and local election officials with detailed guidance on the assistance provisions of the State's election code.

Community Reaction

Conclusions

Hostility toward institutionalized voters from some local officials and residents stems from several factors. The presence of institutional residents at the polls has caused problems and long delays. Busloads of mental patients arriving at the polls evoke suspicion of vote manipulation. There is prejudice against the mentally institutionalized based on the presumption that their presence in a mental institution connotes an inability to reason. Townspeople do not perceive patients as community residents even though many have lived there for decades. Critics of patients' voting contend that they are politically uninformed.

Recommendation 1

Institutional staff should increase community contact to explain the patients' rights and the voting process. They should join with community leaders to combat the prejudice which patients encounter.

Recommendation 2

Private organizations and patient-advocate groups should undertake community education programs to reduce the level of hostility directed toward mental patients.

Prospects for the Future

Conclusion

The Pennsylvania Advisory Committee is guardedly optimistic about the future of institutionalized citizens' voting. Progress has been made in all areas of Pennsylvania as election officials, institu-

tional staff, and community leaders have become more familiar with the issue. However, many problems have arisen and obstacles still confront those patients who wish to vote.

In the immediate future, voting by institutionalized citizens will become increasingly common as more patients demand their rights and as restrictive voting laws are eliminated throughout the country. Hopefully, the Pennsylvania experience can prove beneficial to other areas, and all citizens of the United States, regardless of mental condition, will be able to exercise freely their constitutional right to vote.

Recommendation 1

The courts, the Pennsylvania Department of Justice, the Pennsylvania Department of Public Welfare, and the Pennsylvania Department of State should undertake monitoring programs to assure that local election officials and institutional staff and administrators do whatever is legal and necessary to assure that institutionalized citizens are accorded the full opportunity to exercise the voting franchise.

Recommendation 2

The U.S. Commission on Civil Rights should undertake a national study of the voting rights of the institutionalized. The voting rights of individuals residing in nursing homes, private mental facilities, and correctional institutions should be examined in such a national study.

APPENDIX A

Voting Rights of Institutionalized Persons*

*in retardation facilities, psychiatric hospitals, nursing homes etc.

STATE	ELIGIBILITY TO VOTE				REGISTRATION REQUIREMENTS			ABSENTEE VOTING	
	Eligible to register	Eligible unless adjudicated incompetent	Ineligible if confined to institution	"insane," "non compos mentis" etc. ineligible	Registration deadline before Federal election	Mail and/or absentee registration available	Circumstances under which absentee registration permitted	Absentee ballot available	Circumstances under which absentee voting permitted: (All states except Louisiana allow absentee voting by disabled persons.)
ALABAMA				x	10 days			x	disabled/infirm
ALASKA		x			30 days	x	anyone	x	absent on elec. day
ARIZONA				x	50 days	x	temp. out of state	x	absent from county
ARKANSAS				x	20 days			x	unavoidably absent
CALIFORNIA				x	30 days	x	absent from county	x	unable get to polls
COLORADO		x			32 days	x	absent from county	x	absent from county
CONNECTICUT				x	Sat. 4th wk. before			x	absent from state
DELAWARE				x	3rd Sat. Oct.	x	Presidential only		
DIST. OF COLUMBIA		x			30 days	x	anyone	x	absent from county
FLORIDA		x			45 days	x	if residing outside state or county	x	absent from county
GEORGIA		x			30 days	x	absent from elec. dist.	x	absent from county
HAWAII				x	26 days	x	unable to go to clerk	x	absent from county or over 10 mi. fr. polls
IDAHO				x	10 days	x	abs. fr. home precinct	x	absent from county
ILLINOIS	x				28 days	x	abs. fr. county; disabled (home regis.)	x	absent from county
INDIANA	x				29 days	x	abs. fr. county or confined	x	absent from county
IOWA	x				10 days	x	anyone	x	unable get to polls
KANSAS	x				20 days	x	abs. fr. county or disabled	x	absent from county
KENTUCKY			x		30 days	x		x	absent from county
LOUISIANA		x		x	30 days			x	absent from parish
MAINE		x			election day	x	anyone	x	absent from county
MARYLAND				x	29 days	x	confined to instit.	x	absent from county
MASSACHUSETTS		x			28 days			x	absent from county
MICHIGAN	x				30 days	x	absent fr. county	x	absent from county; over 60
MINNESOTA		x			20 days	x	anyone	x	absent from county
MISSISSIPPI				x	30 days				
MISSOURI		x	x		28 days	x	in counties w.out elect. commissioners	x	absent from county
MONTANA		x			30 days	x	absent fr. county	x	absent from county
NEBRASKA				x	2d Fri. bef. elect.	x	absent fr. county	x	absent from county
NEVADA		x			5th Sat. bef. elect.			x	absent from county
NEW HAMPSHIRE	x				10 days	x	anyone	x	absent from town
NEW JERSEY	x				29 days	x	anyone	x	temp. out of state
NEW MEXICO				x	42 days	x	absent fr. county	x	absent from county
NEW YORK		x			26 days	x	confined	x	absent from county
NORTH CAROLINA	x				21 business days			x	absent from county
NORTH DAKOTA	x				no registration		no registration	x	absent from county
OHIO		x			30 days	x	absent from county; disabled (home-regis.)	x	absent from county; over 62
OKLAHOMA			x		10 days	x		x	absent from county
OREGON		x			30 days	x	absent from county; disabled (home regis.)	x	unable get to polls
PENNSYLVANIA	x				30 days			x	absent from county
RHODE ISLAND		x			30 days	x	shut-ins	x	absent from state
SOUTH CAROLINA				x	30 days				
SOUTH DAKOTA				x	15 days	x	anyone	x	unable get to polls
TENNESSEE	x				29 days	x	anyone	x	unable get to polls
TEXAS				x	30 days	x	anyone	x	absent from county; over 65
UTAH				x	10 days	x	absent from county; disabled	x	absent from county
VERMONT	x				24 days	x	anyone	x	anyone
VIRGINIA		x			31 days			x	absent from county
WASHINGTON				x	30 days		unnecessary for absentee	x	anyone
WEST VIRGINIA				x	30 days	x	absent from county for necessary cause	x	absent from county
WISCONSIN		x		x	2nd Wed. before	x	anyone over 50 miles from residence	x	unable get to polls
WYOMING				x	30 days	x	anyone	x	anyone

APPENDIX B

SUBJECT: Voting by Patients/Residents of State Facilities

April 20, 1977

TO: Robert M. Daly, M.D.
Peter Polloni
Regional Commissioners

FROM: John A. Kane
Assistant Attorney General

Thru: James R. Adams
General Counsel

This memorandum will discuss the legal authority and procedures for voting by residents of State Hospitals and Centers. The research and preparation of this memorandum was primarily the work of Susan Fox, an attorney formerly with this office.

Right to Vote

In 1973 the Attorney General issued an opinion to the effect that institutionalized mentally retarded and mentally ill persons could not be denied the right to vote solely on the basis of either their institutional residence or their degree of mental competence. 1973 Op. Atty. Gen. No. 48. This opinion was followed by a Federal Court Order in 1976 which established that institutionalized mentally retarded and mentally ill persons must be allowed to register and vote by absentee ballot. McGill v. Alton, Civil Action No. 74-1164 (W.D. Pa., January 26, 1976). The Court in McGill found that: "Persons confined to mental institutions must be considered 'qualified absentee electors' entitled to absentee ballots." No distinction is to be made between varying degrees of mental competency or ability. Information concerning the procedures involved in the voting process should be made available to all potential voters within our state facilities.

The electoral franchise also extends to residents of state hospitals and centers who are in confinement prior to trial or subsequent to conviction for a misdemeanor. O'Brien v. Skinner, 414 U.S. 524 (1974). 1974 Op. Atty. Gen. No. 47. However, the Supreme Court has ruled that it is not a denial of equal protection to deny convicted felons the right to vote. Richardson v. Ramirez, 94 Sp. Ct. 2655, 418 U.S. 24 (1974). In Ray v. Kane, Civil Action No. 76-572 (W.D. Pa., October 7, 1976) a federal court in Pennsylvania followed suit.

Registration Procedures

Residents of state hospitals and centers who wish to register in the district where they legally resided prior to entering the institution may do so under the same

provisions of the State Election Code which establish absentee registration procedures for ill or disabled persons. 25 P.S. Section 623-20.3 (Supp. 1976-77), 25 P.S. Section 951-18.2 (Supp. 1976-77). Institutional residents who desire to register as residents of the District in which the institution is located must be allowed to do so. Commonwealth ex rel. Creamer, et al., v. Parkhouse, et al., No. 696 C.D. 1972 (Commonwealth Court of Pennsylvania, October 11, 1972); 1973 Op. Atty. Gen. No. 48. Registration in the district of institutional residence may be effected in the same manner during institutional visits by a team of traveling registrars deputized by election officials.

Additionally, as you are aware, all electors are now able to register by mail. Official registration application forms are available at federal, state, county, and local governmental offices.

Assistance in Voting

If a patient or resident has a physical disability which will render him unable to mark a ballot or operate a voting machine or enter a voting machine booth without assistance, such disability must be recorded on his registration card. Disability should be recorded at the time of registration. 25 P.S. §3058 (1963), §623-20.3(a0 (Supp. 1976-1977). A registered elector with a disability noted on his registration certificate is entitled to receive personal assistance in voting by another registered elector of the district for which the vote is cast. A disabled elector may nominate as his assistant any voter who is registered in the same district. 25 P.S. §3058(B) (1963). Patients and residents may nominate as their assistants staff members of the hospital or center who are registered, qualified electors as outlined above. Letter of Mr. Robert N. Grant, Administrative Officer, State Board of Elections, to William Wade, Board of Elections of Chester County, October 29, 1976. It is desirable that in such instances the nominees be specifically selected as an assistant by the patient/resident.

In those instances where a patient/resident is unable to personally cast his/her vote but desires to exercise his/her right to vote, it is the responsibility of the Superintendent and his staff to assist such person(s) in applying for an official absentee ballot. Application for an absentee ballot may be made to the local county Board of Elections.

Transportation

Transportation may be provided to polling places for patients and residents by staff members. State vehicles may be used for this purpose by employees who have been assigned to provide such transportation as part of their official institutional duties on election day. MH/MR Manual §6591(4) (1973). The director of a facility should designate in writing the employees whose official duties on election day shall include transportation of residents for voting purposes.

Supervision

The superintendent and staff of an institution bear responsibility for adequate care, supervision and security of patients and residents during all phases of registration, transportation and voting.

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